Testimony
of

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before the

Subcommittee on Surface Transportation and Merchant Marine

Committee on Commerce, Science and Transportation

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Senator Hutchison and members of the subcommittee. My name is Jon Roethke. I am the Director of Risk Management for Sea-Land Service, Inc. I am a graduate of the United States Merchant Marine Academy at Kings Point and am an attorney. I have been an active member of the Maritime Law Association of the United States (MLA) since 1962 and am a member of the Ad Hoc Study Group of that Association which is proposing this change to the Carriage of Goods by Sea Act.

Sea-Land, one of the largest ocean carriers in the United States, owns, operates, or charters a fleet in excess of 70 vessels in international and domestic commerce. We move approximately 1.3 million shipments each year. These shipments consist of just about any item that will fit into a container, including refrigerated food, clothing, automobiles, electronic goods, building materials and equipment, bulk liquid, chemicals, and pharmaceuticals.

I have been actively involved with the risk management functions at Sea-Land for the past 37 years. A significant part of that work includes the responsibility for managing the handling and disposition of approximately 10,000 claims annually resulting from allegations of cargo loss and damage. These claims total in excess of 25 million dollars. The incidents upon which the claims are based occur at sea aboard our vessels, in port at our terminals, or during inland transportation by rail or truck. Our liability to our customers for all loss or damage, from the inland point of origin to the inland point of destination anywhere in the world, whether at

sea or on land, is governed primarily by the Sea-Land International Through Bill of Lading. Until 1991 the Sea-Land bill of lading incorporated the current Carriage of Goods by Sea Act (COGSA), which was enacted in 1936, one year before I was born. In 1991, we at Sea-Land took it upon ourselves to bring our bill of lading more into conformity with modern international trade. In the process of doing that, we voluntarily adopted many of the provisions of the Hague-Visby Rules, which provide much of the substance in the proposal before you today.

Mr. Hooper has commented on some of the changes this proposal will accomplish if enacted into law. I would like to spend a brief time on the two changes that Sea-Land considers to be the most significant.

Under existing law (COGSA 36), an ocean carrier is generally not liable for loss or damage to cargo as a result of an "error of navigation." For example, if a carrier's vessel is involved in a collision with another vessel due to a misjudgment of the master resulting in loss or damage to cargo, the carrier is usually exonerated from liability to the shipper of the cargo under COGSA 36. To put this in perspective, this is akin to a trucking company moving your household goods being able to avoid liability if your possessions are destroyed when the driver falls asleep at the wheel and runs off the road. This is unthinkable ashore but sanctioned under COGSA 36 for maritime losses. Sea-Land does not believe it is good business for an international ocean carrier to treat its customers that way. The proposal before you eliminates this defense and subjects international ocean carriers to liability for fault, which is a fundamental concept of the shoreside law in all

civilized countries.

The second significant change that this proposal will accomplish is an increase in the existing limits of liability available to a carrier when it is at fault. Under existing maritime law in this country, an ocean carrier is only responsible for a maximum of $500.00 per package (or, for goods not shipped in packages, per customary freight unit). There are thousands of cases every year involving U.S. international ocean commerce where carriers legally limit their liability to $500.00 for goods valued in the thousands, hundreds of thousands, and, yes, even millions of dollars! The new COGSA would eliminate this onerous provision and would adopt a new and realistic application of limitation that affords recovery of full value in the majority of cases where liability is proven.

It is primarily for these two major changes that Sea-Land urges you to give favorable consideration to the proposal before you. Under the proposed bill, manufacturers and consumers of goods transported internationally by sea will be able to recover for losses caused by carrier neglect and will recover full value in almost every case. Last but not least, changing the existing law will provide further reasons for all carriers to be more pro-active in their loss prevention programs.

Thank you very much for this opportunity to testify before you today. I appreciate your patience and will be glad to answer any questions that you may have.